THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :6958 of 2007

DATED:09-04-2007

BETWEEN:

Sree Siddhi Vinayata Agnikula Kshatriya Fishermen
Co-operative Society (Regd.No.X 127)
Rep., by its President,
Pothabathula Anjaneyulu,
R/o Inavelli,
East Godavari District.

..... PETITIONER

AND

The Chairman,
Zilla Parishad,
Kakinada,
East Godavari District & 2 others.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the action of the respondents in not permitting the petitioner-Society to run the ferrying activities in Bodasakurru ferry, *in spite* of receiving the lease amount and despite the fact that the petitioner's application for getting extension of lease, under the active consideration of Government, as illegal and arbitrary.

3. Petitioner-Society was awarded leasehold rights to run the Bodasakurru ferry for the period from 25-05-2005 to 31-03-2006. It is stated that the petitioner-Society made an application on 13-12-2005 for getting extension of the lease in terms of the orders of the Government in G.O.Ms.No.2237, dated 24-09-2006, and also under Section 10(1) (d) of the A.P.Canals and Public Ferries Act, 1890 (for brevity, 'the Act') and as the said application was not considered the petitioner filed W.P.No.7304 of 2006 and the same was disposed of on 26-04-2006. It is appropriate to extract the entire order of the said Writ Petition as follows:

> *"Petitioner-Society was awarded leasehold rights to run the Bodasakurru Ferry for the period from 25-05-2005 to 31-02-2006 and accordingly it entered into an agreement with the authorities concerned to run the said ferry. Before expiry*

of the lease period, the petitioner made a representation before the Government for extension of lease period of in its favour. Meanwhile, as no orders have been passed on the said representation, the lease period was expired. Accordingly, the Chief Executive Officer-fifth respondent put a proposal to run the ferry on day-to-day basis i.e., Rs.4000/- per day with an advance deposit of Rs.20,000/- for every five days. Accepting the said proposal, the petitioner-Society paid an amount of Rs.20,000/- for a period of five days in advance and was running the said ferry. On expiry of the seven days, when the petitioner-Society was not allowed to run the ferry on day-to-day basis, it moved this Court by filing the present writ petition contending that when it made an application seeking extension of lease in its favour, it is the bounden duty of the respondents to consider the same as per G.O.Ms.No.2237, dated 24-09-1966 and also under Section 10(1) Clause 9(b) of the A.P.Canals and Public Ferries Act, 1890.

The learned Government Pleader for Panchayat Raj, on instructions, submits that the Government after considering the representation of the petitioner-Society, is not agreeable to extend the lease in favour of the petitioner-Society and accordingly through Memo No.15665/CPR&RE/C2/2005, dated 17-02-2006, directed the fifth respondent to take steps for conducting fresh auction for the leasehold rights of Bodasakurru ferry. The learned Government Pleader made available a copy of the said Memo, dated 17-02-2006 before this Court. Whereas, the learned counsel for the petitioner-Society as well as the learned counsel for the respondents 5 and 6 submits that since the lease has not been extended, unauthorized persons are running the ferries and in the process, the local authorities concerned are being deprived of their income by not auctioning the leasehold rights. Further, the learned counsel for the petitioner-Society submits that the petitioner-Society will not have any objection for auctioning the leasehold rights of the ferry subject to the outcome of the application/appeal preferred by the petitioner-Society before the Government, but till the completion of the process of auctioning of the leasehold rights the petitioner-Society may be permitted to run the ferry as per the proposal put by the fifth respondent on day-to-day basis.

Under the above circumstances, the fifth respondent is directed to issue necessary notification for conducting the public auction for leasehold rights of Bodasakurru ferry in terms of the Memo No.15665/CPR&RE/C2/2005, dated 17-02-2006, issued by the Commissioner of Panchayat Raj & Rural Employment, within a period of four weeks from today and complete the process within a period of six weeks from the date of publication of the notification. Till the completion of the said process, the fifth respondent shall consider the claim of the petitioner-Society for running the ferry on day-to-day basis as was done previously, on petitioner depositing a sum of Rs.60,000/- for fifteen days in advance. It is made clear that this interim arrangement is only till the auction process is completed. It is further made clear that the proposed auction will be subject to the orders to be passed on the application/appeal filed by the petitioner-Society before the Government".

4. It is stated that the petitioner-Society is running ferry on day-to-day basis as was done previously by depositing the advance amount of Rs.60,000/- for fifteen days in advance. But however, even before issuing any notification, after obtaining the upset price fixed, the respondents have abruptly stopped the petitioner-Society from running the ferry services. Aggrieved by the said action this Writ Petition has been filed.

5. I am of the opinion that as per the aforesaid order of this Court, till the auction is conducted the petitioner is entitled to run the ferry on day-to-day basis; and abruptly stopping the petitioner from doing so even before the auction is conducted is illegal and contrary to the aforesaid order.

6. Having regard to the facts and circumstances of the case, the Writ Petition is disposed of directing the respondents to permit

the petitioner-Society to run the ferry on day-to-day basis as was done previously as directed by this Court in the aforesaid order till the auction process is completed. The respondents shall forthwith implement the aforesaid order of this Court till the auction is conducted. No order as to costs.

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V.ESWARAIAH, J

09th April, 2007

Note:

Issue operative portion of the order by wire at party's costs.

B/o

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